the prescriptions that he fills. Although he is at work filling these prescriptions, he cannot send them out. Why? Because the mail room is closed.

During the last shutdown, he sent them out with his own money, but he does not know whether he can afford it this time. Can you imagine that?

I have some neighbors down the street from me in Montgomery County, MD, and I noticed their cars were parked in their driveway this morning at 7:15 in the morning. Ordinarily they are gone at about 6:45 or certainly by 7. Why were they there? Because one works for Health and Human Services and the other one works for the Department of Commerce. They have 4 children, 2 are in college, and I am sure they are looking for gifts for Hanukkah and Christmas but I am not sure that they are going to be able to feel that they can transcend that anxiety and the angst of not having work.

I just think that we must look at the human factor of this shutdown and those people who are being unfairly victimized and held hostage for it. It should let us know that we have got to lead, very soon, like within the next few moments say that we can come together as we are supposed to.

But I also want you to know that there are others who are affected adversely by this shutdown, too. The local economy, hotels and restaurants, Federal contracts, certainly I can use as an example the National Institutes of Health grants, research that has been slowed down.

There is an article in the paper today that come out, too. It said that the National Institutes of Health, this is the time of year officials normally would be deciding how to hand out more than $2 billion in research grants. ''They have gone through peer review, have been found to be excellent science and we're about ready to fund them.''

This is research. This is important research. However, we cannot do it. We cannot do it because we do not know what is going to happen with the budget, and we have been told that we must shut down that facet of government.

So there are thousands of Federal workers in Maryland who are on furlough—this comes from the newspaper story—for the second time in 2 months, feeling the most immediate impact of the inability of President Clinton and Congress to agree on a budget.

But there is also a trickle-down effect, and I would like to point that out, albeit briefly, the trickle-down effect to the local economy. I have a letter from a suburban Maryland high technology council talking about those people who are on Federal contracts, who will not be reimbursed.

I say, Mr. Speaker, to this distinguished body, let our people go back to work. Let us balance this budget.

THE BUDGET AND CHRISTMAS

The SPEAKER pro tempore (Mr. DICKEY). Under a previous order of the House, the gentlewoman from North Carolina [Mrs. CLAYTON] is recognized for 5 minutes.

Mrs. CLAYTON. Mr. Speaker, today we witnessed the Republicans playing raw politics by putting up senseless resolutions that are designed to make noise and avoid making policy.

The result is that we are giving the American people a Gingrich Christmas, a Gingrich Christmas of 250,000 Federal employees or more who have a joyless gift of being furloughed and called nonessential in their effort to serve America with their vital services.

A Gingrich Christmas for children means virtually eliminating nutrition programs through block grants and creating 50 different standards, cutting current levels of SSI benefits for children with disability by 25 percent, eliminating the immunization program, eliminating the guarantee of child care and providing inadequate funding, making it difficult if not impossible for their parents to go to work.

A Gingrich Christmas for senior citizens means cutting Medicare by $270 billion, cutting Medicaid by $163 billion, eliminating the guaranteed coverage for health care, eliminating home heating assistance for the poor, radically restructuring nursing home care.

A Gingrich Christmas for the wealthy, however, means a tax cut of $245 billion and welfare for corporate America.

The President would like to give the American people a fair opportunity to be productive and to contribute to this great Nation through their work. The President would like to put those furloughed Federal employees back to work who should not be held hostage just before Christmastime.

The President Clinton Christmas for children would mean maintaining nutritional programs with one Federal standard across America, making sure that there is a hearty breakfast and a healthy lunch for needy children, keeping SSI benefits for children with disabilities, making sure that every needy child gets immunized against polio, tuberculosis and every other disease, retaining the guarantee for child care and providing adequate funds so that their parents who need to go back to work can go back to work and become independent from dependency on this Government.

A President Christmas for senior citizens would mean providing Medicare coverage for American poor elderly, 90 percent of whom have such coverage now in America, protecting the guarantee of Medicaid for the poor, the disabled and children, retaining the 30-year guarantee of health care coverage, maintaining home heating assistance, and keeping nursing home care and providing the same standard of care in those homes.

The President's Christmas to the wealthy Americans would mean, however, a fair tax rather than a free tax ride, for all Americans. A balanced budget in 7 years? Yes, making sure we have a strong, stable and working economy.

Mr. Speaker, Christmas is a time that should bring out the best in America, not the worst in America. The best in America means a real chance for children, real genuine security for our senior citizens.

Christmas is less than a week away, 6 days. The question today is, what will Congress do to ensure that America experiences a joyful Christmas? There will be no joy nor happiness nor excitement if Federal workers are out of work, if children have no reason to smile, and if seniors face undue pain in their most vulnerable years.

Christmas has become important in America today. Christmas is really a holy day, a righteous day where we should celebrate the expectation of a coming of Christ. It is a day where we care about our fellow Americans or our fellow human beings.

Congress must not transform this cheer and this religiously significant day into a day of gloom. We must get on and do the work that we should do to make Christmas a happy day for all Americans.

THE LACK OF POWER OF THE PRESIDENT TO COMMIT TROOPS ABROAD WITHOUT CONGRESSIONAL AUTHORIZATION

The SPEAKER pro tempore. Under a previous order of the House, the gentleman from California [Mr. HORN] is recognized for 5 minutes.

Mr. HORN. Mr. Speaker, we have a President with a lack of will on the budget but an excess of will on having troops in Bosnia.

The excess of will includes the use of an excess of power that in reality does not exist. If George Washington, our greatest President, and John Marshall, our greatest Chief Justice, were here today, they would not believe what the President has done.

Why do I say that? Very simply. Washington presided over the Constitutional Convention. He knew what the Framers meant when they gave the President the power to be Commander in Chief gave the President the power to be Commander in Chief of the Army and Navy. So did Marshall and his court, a court he dominated for over three decades. They made the basic interpretations of what the Constitution was meant to be.

In ''The Federalist'' No. 74 Alexander Hamilton said, very simply, ''The President of the United States is to be 'Commander in Chief of the Army and Navy of the United States and of the militia of the several States when called into the actual service of the United States.'

But when the first President, Washington, confronted a situation such as the current President confronted, he deferred to Congress, as did John Adams, as did Thomas Jefferson, as did most other Presidents.

The expert on this area is Dr. Louis Fisher, senior specialist in separation of powers of the Office of Senior Specialists of the Congressional Research Service in the Library of Congress. Dr. Fisher, in his essay ''The Barbary Wars: Legal Precedent for Invading Haiti?'' noted this: That George Washington and John Adams in their ''military action conformed to the framers' expectation that the decision to go to war or to mount military operations was reserved to Congress and required advance authorization.''

For example, ''President Washington's military actions against Indian tribes were initially authorized by Congress.'' In his writings, George Washington noted specifically that ''military operations were confined to defensive measures. Offensive action required authority from Congress.''

Each President that I have mentioned—Washington, Adams, and Jefferson—said the same thing. Jefferson listened to his Cabinet on the subject of the use of force against the Barbary powers (Morocco, Algiers, Tunis, and Tripoli), and their various theories of when Jefferson decided to act he based his action ''on statutory authority rather than theories of inherent presidential power,'' something we have heard a lot about since 1933.

As Dr. Fisher restates this history, he observes that Jefferson cited the statute of March 3, 1801 as a basis for his action. A directive of May 20th ordered a captain of the Navy to take his squadron to the Mediterranean to protect American commerce against the Barbary powers. Jefferson settled on consulting Congress. Between 1802 and 1815, a dozen statutes were passed by Congress and approved by Presidents Jefferson and Madison to deal with the Barbary pirates who were hurting United States shipping. ''By the end of 1815,'' as Dr. Fisher sums up, ''Madison could report to Congress on the successful termination of the war with Algiers.''

Jefferson recognized there was a difference—as had Washington—that between defensive and offensive military operations. That was not surprising. After all, Jefferson had been Washington's Secretary of State. In fact, Washington said in 1793, ''the Constitution vests the power of declaring war with Congress; therefore, no offensive expedition of importance can be undertaken until after they have deliberated upon the subject, and authorized such a measure.''

We also have in modern times a wise Secretary of Defense who set out some fairly substantial criteria that any President or any Secretary of Defense should meet before committing American troops abroad. In a very significant speech on November 28, 1984, on ''The Uses of Military Power,'' then Secretary of Defense Casper W. Weinberger suggested that there are at least six tests that must be met if American forces are to be used.

Let me just read a few lines from the Secretary's remarks and then we will put the rest in the RECORD.

''First, the United States should not commit forces to combat overseas unless the particular engagement or occasion is deemed vital to our national interest or that or our allies * * *.''

Fourth, he noted still later that when the forces do change, in terms of size, composition and disposition, then so must our combat requirements be continually reassessed. He cautioned: ''We must continuously keep as a beacon light before us the basic questions. Is this conflict in our national interest?

Fifth, he noted that ''before the U.S. commits combat forces abroad, there must be some reasonable assurance we will have the support of the American people and their elected representatives in Congress. This support cannot be achieved unless we are candid in making clear the threats we face; the support cannot be sustained without continuing and close consultation.''

He means with Congress as his next sentence clearly states: ''We cannot fight a battle with the Congress at home while asking our troops to win a war overseas or, as in the case of Vietnam, in effect asking our troops not to win but just to be there.''

Finally, said Secretary Weinberger, ''the commitment of U.S. forces to combat should be a last resort.''

Those are wise words, wise decisions made by George Washington, made by John Adams, made by Thomas Jefferson, made by the Supreme Court of the United States and the Chief Justice of the United States, John Marshall, and in modern times seconded by one of the major Secretaries of Defense of the post-war period.

Mr. Speaker, our troops should not be in Bosnia. Of course, we support them once they are put there. We came within five votes in the House of Representatives in not having our troops in Bosnia when we voted for the Dornan amendment. It is sad that we lost a majority. That was a mistake. It is too bad we did not pick up a few votes on that, but now that our armed services are there, we do have to help.

But ''help our troops'' has also been the ruse that two Presidents found to keep soldiers in Vietnam when it was clear that they should not be there. Of course we support the troops. Every single Member of this body supports the troops. The question is: ''Should they be there in the first place?''

Mr. Speaker, I include the following documents for the RECORD:

EXCERPTS FROM AN ADDRESS ON ''THE USES OF MILITARY POWER'' BY SECRETARY OF DEFENSE CASPAR W. WEINBERGER BEFORE THE NATIONAL PRESS CLUB, NOVEMBER 28, 1984:

I believe the postwar period has taught us several lessons, and from them I have developed six major tests to be applied when we are weighing the use of U.S. Combat Forces abroad. Let me now share them with you:

(1) First, the United States should not commit forces to combat overseas unless the particular engagement or occasion is deemed vital to our national interest or that of our allies. That emphatically does not mean that we should declare beforehand, as we did with Korea in 1950, that a particular area is outside our strategic perimeter.

(2) Second, if we decide it is necessary to put combat troops into a given situation, we should do so wholeheartedly, and with the clear intention of winning. If we are unwilling to commit the forces or resources necessary to achieve our objectives, we should not commit them at all. Of course if the particular situation requires only limited force to win our objectives, then we should not hesitate to commit forces sized accordingly. When Hitler broke treaties and remilitarized the Rhineland, small combat forces then could perhaps have prevented the Holocaust of World War II.

(3) Third, if we do decide to commit forces to combat overseas, we should have clearly defined political and military objectives. And we should know precisely how our forces can accomplish those clearly defined objectives. And we should have and send the forces needed to do just that. As Clausewitz wrote, ''no one starts a war—or rather, no one in his senses ought to do so—without first being clear in his mind what he intends to achieve by that war, and how he intends to conduct it.''

War may be different today than in Clausewitz's time, but the need for well-defined objectives and a consistent strategy is still essential. If we determine that a combat mission has become necessary for our vital national interests, then we must send forces capable to do the job—and not assign a combat mission to a force configured for peacekeeping.

(4) Fourth, the relationship between our objectives and the forces we have committed—their size, composition and disposition—must be continually reassessed and adjusted if necessary. Conditions and objectives invariably change during the course of a conflict. When they do change, then so must our combat requirements. We must continuously keep as a beacon light before us the basic questions: ''Is this conflict in our national interest?'' ''Does our national interest require us to fight, to use force of arms?'' If the answers are ''yes'', then we must win. If the answers are ''no'', then we should not be in combat.

(5) Fifth, before the United States commits combat forces abroad, there must be some reasonable assurance we will have the support of the American people and their elected Representatives in Congress. This support cannot be achieved unless we are candid in making clear the threats we face; the support cannot be sustained without continuing and close consultation. We cannot fight a battle with the congress at home while asking our troops to win a war overseas or, as in the case of Vietnam, in effect asking our troops not to win, but just to be there.

(6) Finally, the commitment of U.S. Forces to combat should be a last resort.

THE BARBARY WARS: LEGAL PRECEDENT FOR INVADING HAITI?

SUMMARY

The claim that President Clinton has constitutional authority to invade Haiti without first obtaining congressional authority is often linked to early presidential actions. Supporters of broad executive power argue that a President may deploy troops on his own authority and that Congress can restrain him only after he acts. As support for this position, the Barbary Wars during the time of Presidents Jefferson and Madison are often cited. However. the historical record demonstrates that these military operations received advance authority from Congress.

To the extent that presidential initiatives were taken before congressional action, they were defensive in nature and not offensive (as contemplated for Haiti).

BACKGROUND

During the presidencies of George Washington and John Adams. U.S. military action conformed to the framers' expectation that the decision to go to war or to mount military operations was reserved to Congress and required advance authorization. For example, President Washington's military actions against Indian tribes were initially authorized by Congress. 1 Stat. 96, §5 (1789); 1 Stat. 121, §16 (1790); 1 Stat. 222 (1791). Consistent with these statutes, military operations were confined to defensive measures. Offensive action required authority from Congress. 33 The Writings of George Washington 73 (John C. Fitzpatrick ed. 1939).

Similarly, when President Washington used military force in the Whiskey Rebellion of 1794, he acted on the basis of statutory authority. 1 Stat. 264, §1 (1792). President John Adams engaged in the ''quasi-war'' with France from 1798 to 1800. Although Congress did not declare war, military activities were fully authorized by more than two dozen statutes in 1798. 1 Stat. 547–611.

ACTIONS BY JEFFERSON AND MADISON

Elected President in 1800, Thomas Jefferson inherited the pattern established during the Washington and Adams administrations: Congress had to authorize offensive military actions in advance. One of the first issues awaiting Jefferson was the practice of paying annual bribes (''tributes'') to four states of North Africa: Morocco, Algiers, Tunis, and Tripoli. Regular payments were made so that these countries would not interfere with American merchantmen. Over a period of ten years, Washington and Adams paid nearly $10,000,000 in tributes.

In his capacity as Secretary of State in 1790, Jefferson had identified for Congress a number of options in dealing with the Barbary powers. In each case it was up to Congress to establish national policy and the executive branch to implement it:

Upon the whole, it rests with Congress to decide between war, tribute, and ransom, as the means of reestablishing our Mediterranean commerce. If war, they will consider how far our own resources shall be called forth, and how far they will enable the Executive to engage, in the forms of the constitution, the co-operation of other Powers. If tribute or ransom, it will rest with them to limit and provide the amount; and with the Executive, observing the same constitutional forms, to make arrangements for employing it to the best advantage. 1 American State Papers: Foreign Relations 105 (Walter Lowrie & Matthew St. Clair Clarke, eds. 1832).

On March 3, 1801, one day before Jefferson took office as President, Congress passed legislation to provide for a ''naval peace establishment.'' 2 Stat. 110, §2 (1801). On May 15, Jefferson's Cabinet debated the President's authority to use force against the Barbary powers. The Cabinet agreed that American vessels could repel an attack, but some departmental heads insisted on a larger definition of executive power. For example, Albert Gallatin, Secretary of the Treasury, remarked: ''The Executive can not put us in a state of war, but if we be put into that state either by the decree of Congress or of the other nation, the command and direction of the public force then belongs to the Executive.'' Other departmental heads expressed different views. Franklin B. Sawvel, ed., The Complete Anas of Thomas Jefferson 213 (1903).

After hearing these opinions from his Cabinet, Jefferson chose to rely on statutory authority rather than theories of inherent presidential power. Citing the statute of March 3, the State Department issued a directive on May 20 to Captain Richard Dale of the U.S. Navy, stating that under ''this [statutory] authority'' Jefferson had directed that a squadron be sent to the Mediterranean. If the Barbary powers declared war on the United States, American vessels were ordered to ''protect our commerce & chastise their insolence—by sinking, burning or destroying their ships & Vessels wherever you shall find them.'' 1 Naval Documents Relating to the United States Wars With the Barbary Powers 467 (1939). Having issued that order, based on congressional authority, Jefferson also wrote that it was up to Congress to decide what policy to pursue in the Mediterranean: ''The real alternative before us is whether to abandon the Mediterranean or to keep up a cruise in it, perhaps in rotation with other powers who would join us as soon as there is peace. But this Congress must decide.'' 8 The Writings of Thomas Jefferson 63–64 (Ford ed. 1897).

Insisting on a larger tribute, the Pasha of Tripoli declared war on the United States. Jefferson did not interpret this action as authority for the President to engage in unlimited military activities. He informed Congress on December 8, 1801, about the demands of the Pasha. Unless the United States paid tribute, the Pasha threatened to seize American ships and citizens. Jefferson had sent a small squadron of frigates to the Mediterranean to protect against the attack. He then asked Congress for further guidance, stating that he was ''[u]nauthorized by the Constitution, without the sanction of Congress, to go beyond the line of defense * * *.'' It was up to Congress to authorize ''measures of offense also.'' Jefferson gave Congress all the documents and communications it needed so that the legislative branch, ''in the exercise of this important function confided by the Constitution to the Legislature exclusively,'' could consider the situation and act in the manner it considered most appropriate. 1 A Compilation of the Messages and Papers of the Presidents 315 (James D. Richardson ed. 1897–1925) (hereafter ''Richardson'').

Alexander Hamilton, writing under the pseudonym ''Lucius Crassus,'' issued a strong critique of Jefferson's message to Congress. Hamilton believed that Jefferson had defined executive power with insufficient scope, deferring too much to Congress. But even Hamilton, pushing the edge of executive power, never argued that the President had full power to make war on other nations. Hamilton merely argued that when a foreign nation declares war on the United States, the President may respond to that fact without waiting for congressional authority:

The first thing in [the President's message], which excites our surprise, is the very extraordinary position, that though Tripoli had declared war in form against the United States, and had enforced it by actual hostility, yet that there was not power, for want of the sanction of Congress, to capture and detain her cruisers with their crews.

* * * [The Constitution] has only provided affirmatively, that, ''The Congress shall have power to declare War;'' the plain meaning of which is, that it is the peculiar and exclusive province of Congress, when the nation is at peace to change that state into a state of war; whether from calculations of policy, or from provocations, or injuries received: in other words, it belongs to Congress only, to go to War. But when a foreign nation declares, or openly and avowedly makes war upon the United States, they are then by the very fact already at war, and any declaration of the part of Congress is nugatory; it is at least unnecessary.'' 7 The Works of Alexander Hamilton 745–747 (John C. Hamilton ed.).

Congress responded to Jefferson's message by authorizing him to equip armed vessels to protect commerce and seamen in the Atlantic, the Mediterranean, and adjoining seas. The statute authorized American ships to seize vessels belonging to the Bey of Tripoli, with the captured property distributed to those who brought the vessels into port. 2 Stat. 129 (1802). Legislators had no doubt about their constitutional authority and duties. ''The simple question now.'' said Cong. William Eustis, ''is whether [the President] shall be empowered to take offensive steps.'' Cong. Samuel Smith added: ''By the prescriptions of the law, the President deemed himself bound.'' Annals of Cong., 7th Cong., 1st Sess. 328–329 (1801).

Congress continued to pass legislation authorizing military action against the Barbary powers. Legislation in 1803 provided additional armament for the protection of seamen and U.S. commerce. 2 Stat. 106. Legislation the next year gave explicit support for ''warlike operations against the regency of Tripoli, or any other of the Barbary powers.'' 2 Stat. 291. Duties on foreign goods were placed in a ''Mediterranean Fund'' to finance these operations. Id. at 292, §2. Further legislation on the Barbary powers appeared in 1806, 1807, 1808, 1809, 1811, 1812, and 1813. 2 Stat. 391 (1806); 2 Stat. 436 (1807); 2 Stat. 456 (1808); 2 Stat. 511 (1809); 2 Stat. 616 (1811); 2 Stat. 675 (1812); 2 Stat. 809 (1813).

Jefferson often distinguished between defensive and offensive military operations, permitting presidential initiatives for the former but not for the latter. In 1805, he notified Congress about a conflict with the Spanish along the eastern boundary of the Louisiana Territory (West Florida). After detailing the problem he noted: ''Considering that Congress alone is constitutionally invested with the power of changing our condition from peace to war, I have thought it my duty to await their authority for using force in any degree which could be avoided.'' 1 Richardson 377.

Military conflicts in the Mediterranean continued after Jefferson left office. The Dey of Algiers made war against U.S. citizens trading in that region and kept some in captivity. With the conclusion of the War of 1812 with England. President Madison recommended to Congress in 1815 that it declare war on Algiers: ''I recommend to Congress the expediency of an act declaring the existence of a state of war between the United States and the Dey and Regency of Algiers, and of such provisions as may be requisite for a vigorous prosecution of it to a successful issue.'' 2 Richardson 539. Instead of declaration of war, Congress passed legislation ''for the protection of the commerce of the United States against the Algerine cruisers.'' The first line of the statute read: ''Whereas the Dey of Algiers, on the coast of Barbary, has commenced a predatory warfare against the United States * * * .'' Congress gave Madison authority to use armed vessels for the purpose of protecting the commerce of U.S. seamen on the Atlantic, the Mediterranean, and adjoining seas. U.S. vessels (both governmental and private) could ''subdue, seize, and make prize of all vessels, goods and effects of or belonging to the Dey of Algiers.'' 3 Stat. 230 (1815).

An American flotilla set sail for Algiers, where is captured two of the Dey's ships and forced him to stop the piracy, release all captives, and renounce the practice of annual tribute payments. Similar treaties were obtained from Tunis and Tripili. By the end of 1815. Madison could report to Congress on the successful termination of war with Algiers.

LEGISLATIVE CONTROLS OF PROSPECTIVE ACTIONS

Can Congress only authorize and declare war, or may it also establish limits on prospective presidential actions? The statutes authorizing President Washington to ''protect the inhabitants'' of the frontiers ''from hostile incursion of the Indians'' were interpreted by the Washington administration as authority for defensive, not offensive, actions. 1 Stat. 96. §5(1789); 1 Stat. 121. §16 (1790); 1 Stat. 222 (1791). Secretary of War Henry Knox wrote to Governor Blount on October 9, 1792: ''The Congress which possess the powers of declaring War will assemble on the 5th of next Month—Until their judgments shall be made known it seems essential to confine all your operations to defensive measures.'' 4 The Territorial Papers of the United States 196 (Clarence Edwin Carter ed. 1936). President Washington consistently held to this policy. Writing in 1793, he said that any offensive operations against the Creek Nation must await congressional action: ''The Constitution vests the power of declaring war with Congress; therefore no offensive expedition of importance can be undertaken until after they have deliberated upon the subject, and authorized such a measure.'' 33 The Writings of George Washington 73.

The statute in 1792 upon which President Washington relied for his actions in the Whiskey Rebellion, conditioned the use of military force by the President upon an unusual judicial check. The legislation said that whenever the United States ''shall be invaded or be in imminent danger of invasion from any foreign nation or Indian tribe.'' the President may call forth the state militias to repel such invasions and to suppress insurrections.'' 1 Stat. 264, §1 (1792). However, whenever federal laws were opposed and their execution obstructed in any state. ''by combinations too powerful to be suppressed by the ordinary course of judicial proceedings, or by the powers vested in the marshals by the act,'' the President would have to be first notified of that fact by an Associate Justice of the Supreme Court or by a federal district judge. Only after that notice could the President call forth the militia of the state to suppress the insurrection. Id. §2.

In the legislation authorizing the Quasi-War of 1796. Congress placed limits on what President Adams could and could not do. One statute authorized him to seize vessels sailing to French ports. He acted beyond the terms of this statute by issuing an order directing American ships to capture vessels sailing to or from French ports. A naval captain followed his order by seizing a Danish ship sailing from a French port. He was sued for damages and the case came to the Supreme Court. Chief Justice John Marshall ruled for a unanimous court the President Adams had exceeded his statutory authority. Little v. Barreme. 6 U.S. (2 Cr.) 169 (1840).

The Neutrality Act of 1794 led to numerous cases before the federal courts. In one of the significant cases defining the power of Congress to restrict presidential war actions, a circuit court in 1806 reviewed the indictment of an individual who claimed that his military enterprise against Spain ''was begun, prepared, and set on foot with the knowledge and approbation of the executive department of our government.'' United States v. Smith. 27 Fed. Cas. 1192. 1229 (C.C.N.Y. 1806) (No. 16.342). The court repudiated this claim that a President could authorize military adventures that violated congressional policy. Executive officials were not at liberty to waive statutory provisions: ''if a private individual, even with the knowledge and approbation of this high and preeminent officer of our government [the President], should set on foot such a military expedition, how can he expect to be exonerated from the obligation of the law?'' The court said that the President ''cannot control the statute, nor dispense with its execution and still less can he authorize a person to do what the law forbids. If he could, it would render the execution of the laws dependent on his will and pleasure; which is a doctrine that has not been set up, and will not meet with any supporters in our government. In this particular, the law is paramount.'' The President could not direct a citizen to conduct a war ''against a nation with whom the United States are at peace.'' Id. at 1230. The court asked: ''Does [the President] possess the power of making war? That power is exclusively vested in congress * * * it is the exclusive province of congress to change a state of peace into a state of war.'' Id.

GOPAC

The SPEAKER pro tempore. Under a previous order of the House, the gentleman from Arizona [Mr. SHADEGG] is recognized for 5 minutes.

Mr. SHADEGG. Mr. Speaker, I rise this evening to discuss with my colleagues and those who are paying attention the recent allegations against GOPAC. Indeed, we have read a great deal about them. Much of the information that has been put forward has been put forward on the premise that it is fact.

Well, it is not fact. What is going on is a lawsuit, a partisan political lawsuit brought to stop a political movement, a movement which captured the hearts and minds of the American people over the last few years.

□ 1900

We ought to get some facts on the table. What are the facts? Is it true that GOPAC broke the law, the Federal Election Commission regulations which say that it cannot involve itself in Federal campaigns without first registering as a Federal PAC? That is the essence of the allegation.

Let us begin with one fact. When was the lawsuit brought? It was brought by the Democratic Congressional Campaign Committee on the eve of Speaker GINGRICH's 1990 reelection campaign. Indeed, within 30 days of when he stood for reelection, a tough reelection campaign. You might ask yourself if the timing of that was at all political. I suggest it was.

That is almost 5 years ago that they brought those allegations against the Speaker and against GOPAC. The essence of the allegation was that GOPAC had crossed the line, that it had failed to register as a Federal election campaign committee and, therefore, had violated Federal law. And that was investigated by the FEC and ultimately a lawsuit was brought.

Last week they brought all kinds of new information to the table. The shocking thing about that information is that although it was presented as fact and as woefully damaging to GOPAC, in fact it was vacuous. It lacked any substance whatsoever.

Here is the issue. The allegation is that because people are involved in GOPAC, including the Speaker and his advisors, discussed their ultimate goal at retreats of winning the presidency and some day taking over the Congress of the United States for the Republican cause, for a conservative movement, for a movement which believes in limited government and lower taxes and sending authority away from Washington and giving it back to the people and the States, that because they generally discussed those ideas at GOPAC meetings, that was a violation of Federal law. Think about that theory. I call upon the ACLU across this nation to think about that theory.

The theory is that if you and a group of like-minded people sit down in a room and/or at a retreat and you discuss your goal, your goal is some day to have a Republican President, because we do not have one, or your goal is to take over Republican majority, a conservative majority of the United States Congress, because we do not have the right then, instantaneously, as a result of those discussions, you are required to register with the Federal Election Campaign Committee and to file their reports year in and year out. Every first amendment lawyer in America ought to be aghast at that allegation, but that is the premise that the FEC brought.

What does it mean? It means if you or your wife or your husband are the member of a Republican women's club or men's club back home or a Democrat women's club or men's club and if in fact you attend one of your meetings and in those discussions you talk about the fact that you would like to see a President elected of your party or you would like to see the Congress strengthen its hold in your party or take over the majority for your party, suddenly those mere discussions subject you to regulation by the FEC.

The notion is shocking. It is a frontal assault on the first amendment. And yet that is exactly what happened, because we learned that at the North Pole Basin retreat of GOPAC, where those involved in this movement, a grass roots movement, which admittedly had as its goal the election of State and local officials to State and local offices, who believed in the agenda of smaller government, who believed in lower taxes, that when they discussed those things, that that was okay until the moment that they said, and some day it would be nice to take over Congress or some day it would be nice to have a Republican President, suddenly at that moment because they had those discussions, there was a requirement that they register with the FEC and a requirement that they then comply with all of the laws.

I submit that that argument is so absurd that the reverse is true. If you had had a retreat of GOPAC and they had simply discussed the Super Bowl or whether or not somebody was going to win the national bake off, then there would have been shocking news. In fact, the allegations are vacuous, and